

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff

v.

PAVEL LAZARENKO,

Defendant

Case No. 00-CR-0284 CRB

ORDER VACATING HEARING

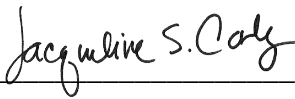
Now pending before the Court is Defendant's motion to dismiss the petition alleging violations of supervised release scheduled for hearing on November 21, 2014. This Magistrate Judge does not have authority to decide his motion. Federal Rule of Criminal Procedure 32.1(b)(1)(A) provides that "[i]f a person is in custody for violating a condition of probation or supervised release, a magistrate judge must promptly conduct a hearing to determine whether there is probable cause to believe that a violation occurred. The person may waive the hearing." (Emphasis added). Defendant is not in custody; therefore, he is not entitled to a probable cause hearing. *See also* Fed. R. Crim. P. Rule 32.1(a)(3)(C) (requiring the magistrate judge before whom the defendant makes her initial appearance to advise the defendant of various rights, including "the person's right, *if held in custody*, to a preliminary hearing under Rule 32.1(b)(1)") (emphasis added); *United States v. Reyes-Gutierrez*, 2008 WL 3538575 (E.D. Wisc. Aug. 11, 2008) (noting "that a parolee arrested and detained has a due process right to a preliminary hearing"). Thus, Defendant's motion, which essentially argues that he did not violate the terms of his supervised release, should be made before Judge Breyer on December 17, 2014. Accordingly, the November 21, 2014 hearing before this Court is VACATED.

United States District Court
Northern District of California

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IT IS SO ORDERED.

Dated: November 20, 2014



JACQUELINE SCOTT CORLEY
United States Magistrate Judge